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HOUSE OF REPRESENTATIVES
REPT. 102-242
Part 2

OMNIBUS CRIME CONTROL ACT OF 1991

OCTOBER 9, 1991.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 3371]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3371) to control and prevent crime, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments to the bill as reported by the Committee on the Judiciary are as follows:

Strike section 1503 and redesignate sections 1504, 1505, and 1506, accordingly.

Strike sections 2006 and 2008 and redesignate section 2007 and sections 2009 through 2020, accordingly.

Page 226, line 9, strike "2011(b)" and insert "2009(b)".

Page 227, line 1, strike "2011(b), and 2014(a)" and insert "2009(b), and 2012(a)".

Page 227, line 9, strike "2014(b)" and insert "2012(b)".

Page 229, line 8, strike "2011(b), 2014(a), and 2015(a)" and insert "2009(b), 2012(a), and 2013(a)".

I. LEGISLATIVE BACKGROUND

H.R. 3371 (the Omnibus Crime Control Act of 1991) was reported by the House Committee on the Judiciary on October 7, 1991 (H. Rept. 102-242, Part 1). Title XX of the bill as reported by that committee contains two amendments to the Internal Revenue Code (the "Code"). Section 2006 of the bill extends the period of limitations for violations of certain Code firearms provisions, and section 2008 of the bill provides for summary forefeiture of certain firearms that have not been registered as required.

Further, H.R. 3371 contains two trade-related provisions, sections 1503 and 1719. Section 1503 adjusts the apportionment among des-

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ignated countries of narcotic raw materials legally imported into the United States. Section 1719 establishes criminal penalties for failure to obey an order to land an airplane and expands the authority of Customs officers.

H.R. 3371 has been sequentially referred to the Committee on Ways and Means for a period ending October 9, 1991, for consideration of the tax and trade-related provisions of the bill. The Committee marked up the bill on October 9, 1991, and reported the bill with amendments to delete bill sections 1503, 2006, and 2008.

The Committee on Ways and Means has received a sequential referral of this legislation only for consideration of such provisions of the bill that fall within the jurisdiction of the committee. As a technical matter, however, the committee has ordered reported to the full House of Representatives the entire bill, as amended. As a substantive matter, the committee does not favorably or unfavorably comment upon the many provisions of the legislation not within the jurisdiction of the committee. Therefore, the favorable reporting of H.R. 3371, as amended, is not intended to signify agreement with each specific provision of the bill.

II. Explanation of Committee Amendments

A. Tax-Related Provisions of H.R. 3371, as Reported by the Committee on the Judiciary

PRESENT LAW

Extension of period of limitations for certain firearms violations

Present law imposes annual occupational taxes on manufacturers, importers, and dealers in "nonregular" firearms, imposes a making and a transfer tax on such firearms, and otherwise imposes several restrictions on the possession and transfer of these weapons. (Code sec. 5801 et seq.). The Code also requires manufacturers and all persons transferring or possessing these firearms to register themselves and their firearms with the Treasury Department. Nonregular firearms include, inter alia, (a) shotguns having barrels of less than 18 inches, (b) rifles having barrels of less than 16 inches in length, (c) certain other shotguns and rifles that are modified to be less than 26 inches in length, (d) machine guns, (e) silencers, and (f) hand grenades, bombs, missiles, mines, and other similar destructive devices. The term "machine guns" includes all automatic weapons.

The following actions with regard to nonregular firearms constitute criminal violations of the Code (sec. 5861):

(1) Failure by manufacturers, importers, dealers and others transferring or possessing nonregular firearms to register with the Treasury Department or to pay any applicable firearms excise taxes;

(2) Manufacture, possession, transfer or possession of firearms that have not been registered as required;

(3) Alteration or obliteration of required serial numbers or possession of a firearm on which the serial number has been altered or obliterated;

(4) Importation of nonregular firearms for other than limited, specific purposes; and

(5) Knowingly making or causing to be made false entries on any firearms application or record required under the Code.

Violators of the Code's firearms provisions are subject to fines of up to $10,000 or up to 10 years imprisonment, or both. Criminal prosecutions for violations of Code provisions generally must begin within three years after the violation occurs (sec. 6531). This period is extended to six years in specified cases, such as violations involving fraud against the United States or the willful failure to pay any tax. No separate period of limitations is prescribed for criminal violations of the Code's nonregular firearms provisions.

Summary forfeiture of firearms that have not been registered as required

Any firearm involved in a violation of the Code's restrictions on nonregular firearms is subject to forfeiture to the United States (sec. 5872).

Any property, including nonregular firearms, that is subject to forfeiture under any provision of the Code may be seized by the appropriate agency of the Treasury Department (sec. 7321). The seized property is delivered to the United States marshal of the district in which the seizure occurs and remains under the control of the marshal pending disposal as provided by law (sec. 7322). The procedures to enforce forfeitures are in the nature of a proceeding *in rem* in the United States District Court for the district where the seizure occurs (sec. 7323).

If the Treasury Department is of the opinion that any items seized as being subject to forfeiture have an appraised value of $100,000 or less, however, the Treasury is required to use administrative, rather than judicial, procedures to enforce forfeiture and any sale of the property (sec. 7325). These administrative procedures require the Treasury to list and describe the items that have been seized and to select three appraisers to prepare appraisals of the property (sec. 7325). If the goods are found by the appraisers to be valued at $100,000 or less, Treasury must publish a notice that describes the seized items and states the time, place, and cause of their seizure and requires any person claiming them to make a claim within 30 days from the date of the first publication of the notice (sec. 7325).

A seized firearm may not be sold to the public (sec. 5872(b)). Unless such a firearm is returned to its owner as having been improperly seized, the firearm must be sold to a State or local government, retained for use by the Federal Government, or destroyed.

DESCRIPTION OF H.R. 3371 PROVISIONS AS REPORTED

Extension of period of limitations for certain firearms violations

Section 2006 of H.R. 3371, as reported, extends the general three-year period of limitations to five years in the case of the firearms violations described above.

Summary forfeiture of firearms that have not been registered as required

Section 2008 of H.R. 3371, as reported, provides that no property rights exist in nonregular firearms that have not been registered as required under the Code and overrides the general Code provisions relating to seizure of property, prescribing instead that upon seizure, these weapons are summarily forfeited.

The bill, however, allows owners of the forfeited weapons to claim reimbursement for the value of the weapons within one year if the seized weapon (1) was not used in a crime, or (2) if so used, was used without the owner's knowledge. Reimbursement would be allowed, for example, if a weapon were subsequently found to have been improperly seized because it was registered as required under the Code and had not been used in the commission of a crime.

REASONS FOR CHANGE

The committee decided to delete the special limitations period included in the bill, as reported by the Committee on the Judiciary, because it presently lacks specific information that the general tax periods of three or six years are inadequate to promote compliance with the provisions of the Code.

The committee further decided to delete the section of the bill, as reported by the Committee on the Judiciary, that mandates summary forfeiture for firearms that have not been registered as required because it has unanswered questions concerning constitutionally protected due process rights. The committee is particularly concerned that taxpayers could be deprived of their property through erroneous seizures with no opportunity to challenge the ensuing forfeiture or seek return of their actual property.

EXPLANATION OF COMMITTEE AMENDMENT

The committee amendment deletes section 2006 of H.R. 3371 (relating to extension of period of limitations for certain firearms violations) and section 2008 of H.R. 3371 (relating to summary forfeiture of firearms that have not been registered as required).

B. Trade-Related Provisions of H.R. 3371, as Reported by the Committee on the Judiciary

PRESENT LAW

Apportionment of narcotic raw material imports

Title 21 of the Code of Federal Regulations section 1312.13(g) allocates 80 percent of the crude opium, poppy straw, and poppy straw concentrate imported into the U.S. for legal drug production to India and Turkey. The remaining 20 percent is available to Yugoslavia, France, Poland, Hungary, and Australia.

Criminal penalty for failure to obey order to land aircraft

Title 19, section 1581 of the United States Code specifies the authority of Customs officers. Section 1581(d) limits the penalty for failure to stop at command at a minimum fine of $1000 and a maximum fine of $5000.

Customs officers have the authority to seize any vessel, vehicle, or merchandise that breaches the laws of the United States.

DESCRIPTION OF H.R. 3371 PROVISIONS AS REPORTED

Apportionment of narcotic raw material imports

Section 1503 of H.R. 3371 changes the Turkey/India allotment from 80 percent to 70 percent in 1992, divided between Turkey and India as 40 percent and 30 percent respectively. In 1993, Turkey and India would be allotted 60 percent, divided as 40 percent and 20 percent respectively. This increases the market share available to the other countries to 30 percent in 1992 and 40 percent in 1993.

Criminal penalty for failure to obey order to land aircraft

Section 1719(a)(3) of H.R. 3371 expands the authority of the Customs officer as described in section 1581(d) of title 19. Section 1719(a)(1) makes it a criminal offense for failure to land an aircraft in response to an order from a Federal law enforcement officer, which includes Customs officers. The bill imposes a fine and/or imprisonment of up to three years for an airplane pilot or operator who intentionally disobeys an order to land given by an officer enforcing laws relating to controlled substances.

Section 1719(e) of H.R. 3371 permits seizure and forfeiture of an aircraft used in violation of section 1719(a)(1).

REASONS FOR CHANGE

Section 1503 may change the revenues collected by the U.S. Customs Service for imported merchandise. A change in revenues must be analyzed carefully to avoid violation of the Budget and Reconciliation Act of 1990 and possible sequestration.

EXPLANATION OF COMMITTEE AMENDMENT

The committee amendment deletes section 1503 of H.R. 3371 (relating to apportionment of legal narcotic raw materials among designated countries).

III. Effect of the Committee Amendments on the Budget

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the budget effect of the committee amendments to H.R. 3371.

The committee amendments to H.R. 3371 will have no effect on budget receipts.

IV. Vote of the Committee and Other Matters To Be Discussed Under House Rules

A. Vote of the Committee

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, H.R. 3371, as amended. The bill, as amended, was ordered favorably reported by voice vote.

B. Other Matters

In compliance with clause 2(l)(3) and 2(l)(4) of rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 3371, as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to the Internal Revenue Code amendments in H.R. 3371 (sections 2006 and 2008, relating to violations of certain firearms tax and administrative provisions) that the committee concluded that it is appropriate to remove the tax provisions contained in H.R. 3371 as reported by the House Committee on the Judiciary. Also, the committee reviewed the trade-related provisions of the bill, and removed bill section 1503 (relating to changes in the import apportionment of legal narcotic raw materials among designated countries).

Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Congressional Budget Office, the committee states that the changes made to existing law by the committee amendments involve no new or increased tax expenditures.

Budget Authority

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Congressional Budget Office, the committee states that the changes made by the committee amendments involve no new budget authority.

Congressional Budget Office Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Congressional Budget office has not yet submitted a statement with respect to the committee amendments to the bill.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject of the committee amendments.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of the committee amendments is not expected to have any inflationary impact on prices and costs in the operation of the national economy.

V. Changes in Existing Law (as Amended by the Committee on the Judiciary) Made by the Bill, as Reported

The bill was referred to this committee for consideration of such provisions of the amendments reported by the Committee on the Judiciary, as fall within the jurisdiction of this committee pursuant to clause (l) of Rule X of the Rules of the House of Representatives.

The changes made to existing law by the amendment reported by Committee on the Judiciary are shown in the report filed by that Committee (Rept. No. 102-242, Part 1).

For the information of the Members of the House of Representatives, changes made by this Committee to existing law as amended by the Committee on the Judiciary are shown as follows (matter proposed to be omitted is shown in linetype italic, matter in which no change is proposed is shown in roman).

INTERNAL REVENUE CODE OF 1986

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Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 53—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

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Subchapter D—Penalties and Forfeitures

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SEC. 5872. FORFEITURES.

(a) LAWS APPLICABLE.—

(1) IN GENERAL.—Any firearm involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal revenue laws relating to searches, seizures, and forfeitures of unstamped articles are extended to and made to apply to the articles taxed under this chapter, and the persons to whom this chapter applies.

(2) SUMMARY FORFEITURE OF UNREGISTERED FIREARMS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shall exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

(B) RIGHTS OF INNOCENT OWNERS.—Within 1 year after any summary forfeiture made pursuant to subparagraph (A), the owner of the property seized (including any person having an interest in the property) may make application to the Secretary for reimbursement of the value of the property. The Secretary shall make an allowance to the claimant not exceeding the value of the property so forfeited, if the claimant establishes to the satisfaction of the Secretary that—

(i) the property has not been involved or used in a violation of law, or

(ii) any unlawful involvement or use of the property had been without the claimant's consent, knowledge, or willful blindness.

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Subtitle F—Procedure and Administration

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CHAPTER 66—LIMITATIONS

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Subchapter D—Periods of Limitation in Judicial Proceedings

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SEC. 6531. PERIODS OF LIMITATION ON CRIMINAL PROSECUTIONS.

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted with 3 years next after the commission of the offense, except that the period of limitation shall be ~~*5 years for offenses described in section 5861 (relating to firearms), and*~~ 6 years—

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